

REMARKS

This Amendment is being filed in response to the Final Office Action mailed April 30, 2008, which has been reviewed and carefully considered.

Claims 1-6 remain in this application, where claims 1 and 3 are independent.

In the Final Office Action, claims 1-6 are rejected under 35 U.S.C. §102(a) as allegedly anticipated by U.S. Patent No. 6,195,159 (MacDonald). It is respectfully submitted that claims 1-6 are patentable over MacDonald for at least the following reasons.

MacDonald is directed to a system which determines properties of a lens. The MacDonald system includes a light source and a target pattern 101 illuminated by the light source. As shown in FIG 1A, and described on column 10, lines 54-58, a detector 105 is moved along the optical axis of a lens 5 (in directions 108) so the detector 105 is movable through a focal plane of the lens 5.

A target pattern holder 102 holds the target pattern 101 shown in FIG. 5, in front of light source 100. The target pattern 101 includes features 110, such as a target pattern holder 102 holds a

target pattern, such as target pattern 101 shown in FIG. 5, in front of light source 100. The target pattern 101 is a single pattern and comprises an opaque metallic substrate which includes a plurality of features 110. As clearly shown in FIG 5, the features 110 are in a single plane.

In stark contrast, the present invention as recited in independent claim 1, and similarly recited in independent claim 3, amongst other patentable elements recites (illustrative emphasis provided):

establishing the position of the focal plane from the modulation depth of the test object image, characterized in that the step of arranging a test object comprises arranging a first test object between the illumination system and the expected focal plane of the optical system and a second test object between this plane and the optical system.

Two test objects located at different locations between the illumination system and the optical system, namely, a first test object between the illumination system and the expected focal plane of the optical system and a second test object between this focal plane and the optical system, are nowhere disclosed or suggested in MacDonald. Rather, MacDonald merely disclosed a single target pattern 101 with features 110 that are in a single plane. Having

two test objects located at different locations between the illumination system and the optical system is not merely "the manner in which a claimed apparatus is intended to be employed," as noted on page 5 of the Final Office Action, but rather features of the claims themselves, and thus should be given patentable weight.


Accordingly, it is respectfully submitted that independent claims 1 and 3 is allowable, and allowance thereof is respectfully requested. In addition, it is respectfully submitted that claims 2 and 4-6 should also be allowed at least based on their dependence from independent claims 1 and 3.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Amendment in Reply to Final Office Action mailed on April 30, 2008

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

By 
Dicran Halajian, Reg. 39,703
Attorney for Applicant(s)
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THORNE & HALAJIAN, LLP
Applied Technology Center
111 West Main Street
Bay Shore, NY 11706
Tel: (631) 665-5139
Fax: (631) 665-5101